

CHARGE: 402 (a) (3)—contained insects, insect parts, and rodent hairs; and 402 (a) (4)—prepared under insanitary conditions.  
DISPOSITION: 9-7-54. Consent—claimed by Enoch Packing Co., Inc. Converted to distillery stock.

### VEGETABLES\*

**23071. Canned corn.** (F. D. C. No. 38850. S. Nos. 24-930 M, 24-937 M.)  
QUANTITY: 135 cases, 6 6-lb., 10-oz. cans each, at Yakima, Wash.  
SHIPPED: 12-21-55 and 1-12-56, from Salem, Oreg., by Western Oregon Packing Corp.  
LABEL IN PART: (Can) "Lin-Ton Brand Whole Kernel Golden Sweet Corn."  
LIBELED: 2-14-56, E. Dist. Wash.  
CHARGE: 402 (a) (3)—contained decomposed substance when shipped.  
DISPOSITION: 4-3-56. Default—destruction.

**23072. Canned corn.** (F. D. C. No. 38805. S. Nos. 38-150 M, 38-334/6 M.)  
QUANTITY: 69 cases, 48 8-oz. cans each, and 322 cases, 24 1-lb. cans each, at Mexico, Mo.  
SHIPPED: Between 8-25-55 and 11-23-55, from Milford, Ill., by Milford Canning Co.  
LABEL IN PART: (Can) "Iga \* \* \* Cream Style White Sweet Corn," "Iga \* \* \* Cream Style Country Gentleman White Corn," and "Iga \* \* \* Cream Style Golden Sweet Corn."  
LIBELED: 12-23-55, E. Dist. Mo.  
CHARGE: 402 (a) (3)—contained worms and worm fragments when shipped.  
DISPOSITION: 4-24-56. Default—destruction.

**23073. Green olives in brine.** (F. D. C. No. 38952. S. No. 28-551 M.)  
QUANTITY: 73 275-lb. bbls. at San Juan, P. R.  
SHIPPED: 1-18-56, from Woodlake, Calif., by Woodlake Ranch, Inc.  
LIBELED: 2-14-56, Dist. P. R.  
CHARGE: 402 (a) (3)—contained insects and insect parts when shipped.  
DISPOSITION: 4-12-56. Consent—claimed by Woodlake Ranch, Inc. The olives were reconditioned by removal from the barrels and washing and repacking them into clean containers with new brine.

### TOMATOES AND TOMATO PRODUCTS

**23074. Canned tomato products.** (Inj. No. 240.)  
COMPLAINT FOR INJUNCTION FILED: 12-28-51, S. Dist. Ind., against Virgil Etchison of Atlanta, Ind., t/a New Palestine Canning Co., at New Palestine, Ind.  
CHARGE: The complaint alleged that the defendant was engaged in the preparation, packing, holding, and interstate distribution of canned tomato products and had been and was, at the time of filing the complaint, introducing and causing to be introduced into interstate commerce such articles which were adulterated within the meaning of 402 (a) (3) and (4) by reason of

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\*See also No. 23062.

the presence in the articles of fly eggs, maggots, and decomposed tomato material, and by reason of their being prepared, packed, and held under insanitary conditions at the defendant's New Palestine plant. It was alleged further that the insanitary conditions resulted from and consisted of the presence of house flies and fruit flies in and around the places in the plant where the articles were prepared, packed, and held, and in and around the machinery, equipment, and raw materials used in preparing, packing, and holding the articles, and also from fly-infested equipment and general carelessness on the part of the defendant. In addition, it was alleged that the defendant had on hand at his plant large stocks of adulterated canned tomato products which constituted a menace to interstate commerce.

The complaint alleged further that the defendant was well aware that his activities were in violation of the law; that he had previously been convicted for shipping in interstate commerce canned tomato products adulterated within the meaning of 402 (a) (3) and (4); that, at the time of filing the complaint, there was pending a criminal action against the defendant for the interstate shipment of decomposed tomato juice adulterated within the meaning of 402 (a) (3); that the defendant's canned tomato products had been seized and condemned on several occasions because of adulteration within the meaning of 402 (a) (3) and (4); and that numerous inspections had been made by inspectors of the Food and Drug Administration, during which the insanitary conditions existing were brought to the attention of the defendant and his employees. The complaint alleged further, on information and belief, that the defendant would continue to introduce and deliver for introduction into interstate commerce adulterated canned tomato products unless restrained by the court.

DISPOSITION: On 1-10-52, a temporary restraining order was issued. Thereafter, on 1-16-52, the defendant filed an answer denying the material allegations of the complaint. The complaint subsequently was amended to include a charge of adulteration within the meaning of 402 (b) (2) in that water had been added to the articles. The case came on for trial on 1-24-52. The trial was concluded on 1-29-52, and on 3-12-52, the court handed down the following findings of fact and conclusions of law:

STECKLER, *District Judge*: "The above entitled cause came on regularly for trial, and the Court, having duly considered the pleadings, exhibits, and testimony of the plaintiff and defendant taken in open court, and the arguments and statements of counsel, and being fully advised in the premises, now finds the following:

#### FINDINGS OF FACT

"1. The defendant, Virgil Etchison, owns and operates three canning plants under the names New Palestine Canning Company, Omega Canning Company, and Morgantown Canning Company located respectively, at New Palestine, Indiana; Omega, Indiana; and Morgantown, Indiana; where he has been and is engaged in the business of canning tomatoes and tomato juice and introducing such foods into interstate commerce.

"2. The New Palestine Canning Company plant annually disposes of a considerable portion of its canned tomatoes and tomato juice in the channels of interstate commerce.

"3. The unsorted stock of tomatoes used by the New Palestine Canning Company in its 1951 canning operations contained large numbers of decomposed and partly decomposed tomatoes.

"4. The unsorted stock of tomatoes used by the New Palestine Canning Company in its 1951 canning operations was infested with drosophila flies, fly eggs and larvae.

"5. The defendant, by failing to take proper sanitary precautions, including the installation of adequate screening of the plant and privy appurtenant thereto, permitted the New Palestine Canning Company plant to become infested with scavenger flies.

"6. The washing, peeling, trimming, and sorting operations in the New Palestine Canning Company plant in 1951 were not adequate to remove all drosophila and scavenger fly eggs and larvae from the tomatoes used in the 1951 pack.

"7. An insufficient number of sorters and trimmers were used at the New Palestine Canning Company plant in 1951 adequately to remove from the poor quality of raw tomato stock all the decomposed and partly decomposed tomatoes from the 'juice' line and as a result much decomposed tomato material went into the tomato juice.

"8. The tomato juice used in the New Palestine Canning Company plant in 1951 as a packing medium for canned tomatoes contained substantial amounts of decomposed tomato material.

"9. The tomato juice canned in the New Palestine Canning Company plant in 1951 contained substantial amounts of decomposed tomato material.

"10. Representative samples were taken by the Government from the stock of canned tomatoes and canned tomato juice packed by the New Palestine Canning Company in 1951, the unshipped portion of which was and now is located in the defendant's warehouse in New Palestine, Indiana.

"11. Objective examinations of these samples by qualified Government analysts, employing well-recognized and accepted methods, disclosed that the canned tomatoes and canned tomato juice contained fly eggs, fly larvae, and mold.

"12. Examinations of the samples of canned tomato juice taken from the stock processed at the New Palestine Canning Company plant in 1951 and now located at the warehouse of the defendant in New Palestine, Indiana, revealed that cans bearing at least one particular code number had been diluted approximately 50 percent with water.

"13. The New Palestine Canning Company plant was inspected by Federal and Indiana Food and Drug Inspectors in 1949 and 1951 at which times the plant manager's attention was directed to the very poor condition of the raw stock, the insanitary conditions of the factory, and the inadequate washing, cleaning and sorting operations.

"14. Pursuant to the provisions of the Federal Food, Drug and Cosmetic Act a number of seizures in 1949 and 1950 of tomato products shipped by the defendant were made based on allegations that such products consisted in part of filth or decomposed tomato material.

"15. No answers were filed in said seizure proceedings and the articles involved were destroyed upon a showing by the Government that they violated provisions of the Federal Food, Drug, and Cosmetic Act.

"16. In the last two years the defendant has appeared before this Court on two occasions, charged with violating provisions of the Federal Food, Drug, and Cosmetic Act by reason of having introduced into interstate commerce from the New Palestine Canning Company and the Omega Canning Company plants adulterated tomato products.

"17. The defendant, after pleading guilty on the first above occasion and nolo contendere on the second, was fined by this Court.

"18. Unless restrained by the Court, the defendant will introduce or cause to be introduced into interstate commerce canned tomatoes and canned tomato juice consisting in part of filthy and decomposed substances.

#### CONCLUSIONS OF LAW

"From the foregoing facts, the Court concludes:

"1. This Court has jurisdiction of the subject matter hereof and the parties hereto under 21 U. S. C. 332 (a).

"2. The canned tomatoes and canned tomato juice processed in the plant of the New Palestine Canning Company in 1951 were adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act in that said articles of food consisted in part of a filthy substance by reason of the presence therein of fly eggs and fly larvae, and of a decomposed substance by reason of the presence therein of decomposed tomato material (21 U. S. C. 342 (a) (3)).

"3. The canned tomatoes and canned tomato juice processed in the New Palestine Canning Company plant in 1951 were further adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act in that they were prepared and packed under insanitary conditions whereby they might have become contaminated with filth (21 U. S. C. 342 (a) (4)).

"4. Canned tomato juice bearing at least one particular code number, processed in 1951 in the plant of the New Palestine Canning Company was adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act in that water was substituted in part for tomato juice (21 U. S. C. 342 (b) (2)).

"5. The canned tomatoes and canned tomato juice processed in 1951 in the plant of the New Palestine Canning Company and now stored in the defendant's warehouse in New Palestine, Indiana, are adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act and, therefore, do not constitute legal articles of interstate commerce.

"6. Despite warnings from Federal and Indiana Food and Drug Inspectors resulting from observations of faulty factory operations and notwithstanding seizures of interstate shipments of the defendant's canned tomato products and criminal proceedings against him brought in this Court based on such shipments, the defendants, in 1951, and for several years past caused the introduction or delivery for introduction into interstate commerce of adulterated canned tomatoes and canned tomato juice and will continue to do so unless restrained by this Court.

"7. A large part of the adulterated canned tomato products prepared and packaged by the defendant in 1951 in his New Palestine Canning Company plant has already been shipped in interstate commerce and the remainder of such pack which is now stored in the defendant's warehouse in New Palestine, Indiana, will apparently also be shipped in interstate commerce unless this Court restrains such action.

"8. Plaintiff's prayer for a permanent injunction should be granted restraining the defendant, Virgil Etchison, from causing the introduction or delivery for introduction into interstate commerce of canned tomato products, heretofore packed at his New Palestine, Indiana, plant, which are adulterated within the meaning of Section 402 (a) (3) and (4) and 402 (b) (2) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 342 (a) (3) and (4) and 342 (b) (2)).

"9. Plaintiff is entitled to all costs properly taxable against the defendant, Virgil Etchison."

On the same date, an order was entered permanently enjoining and restraining the defendant from introducing or delivering for introduction into interstate commerce the canned tomato products produced in the year 1951, and on hand at the defendant's New Palestine plant. The order provided also that the defendant should maintain and keep accurate and complete records and accounts showing the amount, location, and disposition of the 1951 pack, which records were to be available to the officers of the court and inspectors of the Food and Drug Administration.

Subsequently, the Government filed a motion to alter or amend the judgment to include an order permanently enjoining the defendant from introducing or delivering for introduction into interstate commerce all canned tomato products adulterated within the meaning of 402 (a) (3) and (4) and 402 (b) (2). This motion was overruled by the court on 6-24-52. Thereafter, the defendant filed a motion to modify and dissolve the injunction, which was denied on 9-14-53.

Subsequently, the Government instituted a criminal contempt action against the defendant, charging that he violated the injunction decree of 3-12-52, by refusing to furnish information concerning the distribution of the New Palestine 1951 pack of tomato products. On 5-13-54, the matter came on for hearing before the court, and after consideration of the evidence and arguments of counsel, the court ordered that the contempt action be dismissed.